

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

GENESIS HILL,

Petitioner,

-v-

BETTY MITCHELL, Warden,

Respondent.

**Case No. 1:98-cv-452
JUDGE SARGUS
Magistrate Judge Kemp**

OPINION AND ORDER

This is a death penalty habeas corpus action brought by petitioner, Genesis Hill, pursuant to 28 U.S.C. §2254. This matter is before the Court upon petitioner's motion to expand the record (Doc. # 146), respondent's brief in response (Doc. # 147), and petitioner's reply (Doc. # 148).

Petitioner seeks to expand the record with seven affidavits: (A) by neuropsychologist Dr. Michael Gelbort; (B) by psychologist Robert Smith; (C) by former Hamilton County juvenile probation officer Lynda Phillips; (D) by petitioner's aunt Denise Hill; (E) by petitioner's aunt Jennifer Clark, (F) by petitioner's aunt Angela Hill; and (G) by petitioner himself. Petitioner argues that these affidavits are relevant not only to many of his constitutional claims, but also to issues such as whether an evidentiary hearing is warranted and whether he is mentally competent.

In a brief in response, respondent does not object to the expansion of the record proposed by petitioner, but reserves his right to argue that the documents are irrelevant because, among other things, ineffective assistance of appellate counsel cannot serve as cause to excuse various procedural defaults alleged by respondent in his motion to dismiss, and to argue that this Court

may not grant relief based on these documents because they were not properly introduced during petitioner's state court proceedings despite being available. (Brief in Response, Doc. # 147, at 2.) Respondent's reservations are duly noted and his right to make the arguments described above will not be precluded by his acquiescence to the expansion of the record proposed by petitioner.

For good cause shown and because respondent does not object, petitioner's motion to expand the record, (Doc. # 146), is GRANTED. Pursuant to the Court's authority under Rule 7 of the Rules Governing Section 2254 Cases, the record is hereby expanded to include the seven affidavits submitted by petitioner as exhibits A through G to Doc. # 146.

IT IS SO ORDERED.

/s/ Terence P. Kemp
United States Magistrate Judge